CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

3rd Meeting, 2020 (Session 5)

Thursday 23 January 2020

The Committee will meet at 9.00 am in the Robert Burns Room (CR1).

1. **Article 50 Inquiry - Withdrawal Agreement and Negotiation of the Future Relationship:** The Committee will take evidence from—

   - Dr Fabian Zuleeg, Chief Executive and Chief Economist, European Policy Centre;
   - Charles Grant, Director, Centre for European Reform (by video link);
   - Dame Mariot Leslie, Former UK Diplomat and Member of the First Ministers’ Standing Council on Europe;
   - Professor Anand Menon, Professor of European Politics and Foreign Affairs, Kings College London.

2. **Consideration of evidence (in private):** The Committee will consider the evidence heard earlier in the meeting.

Stephen Herbert
Clerk to the Culture, Tourism, Europe and External Affairs Committee
Room T3.40
The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk  
PRIVATE PAPER  

CTEEA/S5/20/3/1  
CTEEA/S5/20/3/2 (P)
Culture, Tourism, Europe and External Affairs Committee

3rd Meeting, 2020 (Session 5) Thursday 23 January

Article 50 – Withdrawal Agreement and the Negotiation of the Future Relationship

Note by the Clerk

Evidence Session

The Committee will take evidence on the Withdrawal Agreement, negotiated between the UK Government and the European Union in October 2019, and on the negotiations on the future relationship between the UK and European Union. The Committee will take evidence from—

- Fabian Zuleeg, Chief Executive, European Policy Centre
- Charles Grant, Director, Centre for European Reform (via video-conference)
- Dame Mariot Leslie, former UK Diplomat
- Anand Menon, Professor of European Politics and Foreign Affairs, King’s College London

Supporting Information

A written submission has been provided by Fabien Zuleeg and is provided in Annexe A. A SPICe paper outlining key issues for consideration with regard to the negotiations on the future relationship between the UK and the European Union is provided in Annexe B.
The Road to Nowhere? Prospects for a Post-Brexit Trade Deal

The Brexit negotiations continue towards an inevitable showdown, most probably at the EU Summit in December 2018. Faced with a choice between the Withdrawal Agreement (WA) and a ‘no-deal’ scenario, the United Kingdom will – most likely – choose not to commit economic suicide. The transition period, which will be included in the WA, will buy some time to negotiate the post-Brexit relationship. However, the next phase of negotiations will not be any easier: the UK and the EU will find it virtually impossible to agree on a trade deal. As a consequence, at the end of the transition period, the cliff edge will loom again. But there is an alternative – not to leave the Single Market and Customs Union after all.

BACKGROUND – WHAT LONG-TERM FUTURE RELATIONSHIP?

A deep and special relationship? Ever since the UK voted to leave the EU on 23 June 2016, the question what the long-term economic relationship between the UK and the EU will look like has been on everybody’s mind. But progress has been slow. The EU has insisted on sequencing – determining the exit modalities before the discussion on the future relationship – and has made it clear that the UK cannot have its cake and eat it too, i.e. having the benefits of membership while leaving the Union. Although the UK had stated that it aimed for a “deep and special relationship”, any tentative proposal from London has been (and will continue to be) challenged by an opposite faction of the Conservative Party. The latest ideas put forward in the so-called ‘Chequers proposition’ appear to break EU red lines such as the indivisibility of the Single Market and are thus very unlikely to materialise.

At the same time, London has set two crucial red lines: first, the UK will exit both the Customs Union (CU) and Single Market (SM). Second, EU regulations and jurisdictions will cease to apply. While in the past few months there has been an intensive domestic debate on how the UK can stay as close as possible to the CU, so far these UK red lines have not changed. From an EU perspective, this implies that the future relationship will have to be defined by a trade deal, similar to the bilateral agreements concluded with Japan or Canada. Economically, such trade deals are significantly inferior to membership of the Single Market, as they are more limited in scope – broadly excluding services – with integrated markets not being the default.

A frictionless border with Northern Ireland?

An exit from the CU and the SM also creates significant dilemmas regarding the border between the Republic of Ireland and Northern Ireland. Both the EU and the UK have committed to keeping this border frictionless without physical infrastructure. But so far the UK has failed to come up with a viable solution that is compatible with its red lines. The so-called backstop, which the EU insists on including in the WA, would see Northern Ireland effectively remaining in the CU and SM – implying a customs border in the Irish Sea – if the UK cannot come up with an alternative solution that guarantees a frictionless border. Many in the UK see this outcome as politically unacceptable. For
this reason, the UK Government has been looking into possible customs arrangements for the UK as a whole, as well as regulatory alignment. The partial proposals have so far failed to convince the EU27, in part because they involve agreeing on and creating new and untested governance arrangements.

Thus, unless the UK changes its red lines, the negotiations will focus on a free trade agreement. In any case, the talks on the details of the future relationship have to start after Brexit since Brussels can only engage in trade discussions with third countries. The only reference to the future relationship will be in the political declaration, which is merely a statement of intent.

STATE OF PLAY – THE REMAINING HURDLES

To get to the negotiations on the future relationship, the UK will have to accept the WA, including the backstop. Post-Brexit, it foresees a transition - or standstill – period until the end of 2020, in which all the provisions of the Customs Union and the Single Market will continue to apply, but the UK will no longer have political representation in the Union’s institutions. Any agreement on the long-term relationship will have to be concluded before the end of the transition period, although there might be the possibility of a limited extension (one year or so) if it is built into the WA. However, even then, there would be little time to negotiate a trade deal.

There is still the possibility that the process will be altered or stopped by Westminster. There is currently no majority for a hard Brexit. But time is running out. Prime Minister May will probably be able to force through the WA when the UK faces the choice between that agreement or no deal at all, which would be economically and politically disastrous for the UK. Theresa May will need to rely on the votes of the Conservative Party, which means that she will probably not offer a soft Brexit given the strength of the Eurosceptic wing within her party. But even if the UK moves closer to a soft Brexit, the only place to include an aspiration for a closer relationship would be in the political declaration. The EU27 might well be willing to accommodate such a change in political direction as long as it does not imply a weakening of EU principles, such as the indivisibility of the Single Market. It will then be up to the negotiations on the long-term relations to deliver. They will, however, be much harder than most commentators seem to expect.

PROSPECTS – TOWARDS THE CLIFF EDGE ONCE AGAIN

Beyond Brexit: getting more, not less complicated If the WA is agreed, the post Brexit transition period will be the time in which to negotiate the long-term relationship, starting from the aspirations set out in the political declaration that accompanies the WA. For many, this will be a relief, expecting that negotiations will advance more quickly once the Article 50 issues are out of the way. But this is unlikely to be the case. Presciently, in October last year, Angela Merkel noted that “the second stage […] is undeniably going to be more complicated than the first stage”.1

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1 https://www.theguardian.com/politics/2017/oct/20/brexit-trade-talksmore-complicated-than-first-phase-angela-merkel
The process will start by setting the final goal of the negotiations, i.e. the landing zone that is crucial in defining the negotiation process. It is easy for both sides to agree that there should be a deep and comprehensive trade deal, together with a customs partnership. But this does not imply that the negotiations will produce a Norway+ agreement. As long as the UK red lines (leaving the CU and the SM) and those of the EU27 (the benefits of the SM and the CU can only be granted to countries fully committed to both and respecting all obligations such as Freedom of Movement) the most integrated solution the negotiations can reach is a Canada+ arrangement. In other words, the only workable solution appears to be an ambitious and far-reaching free trade agreement. But even if it is the best and most comprehensive trade deal the EU has ever struck, it is still a long way short of being inside the Single Market. And it is far from certain that both sides can agree on such a trade deal.

**Agreeing on a disintegration deal**

One of the critical challenges is time. Negotiating a comprehensive and ambitious agreement will take longer than the 21 months of the transition period.\(^2\) Even an extension of the transition by a year or so will probably not be enough, especially since the beginning is likely to be slow: in 2019, the upcoming changes at the helm of EU institutions (Parliament, Commission, and Council) are expected to delay substantive progress.

But time is not the only problem. There are other reasons why concluding a free trade agreement will be challenging:

1. First, on the EU side, the negotiations will become more technical, driven by different negotiation teams for each topic (e.g. trade, security, justice and home affairs). The experienced EU negotiators will be subject to much less political pressure to compromise. They will also benefit from a much stronger mandate to deliver on the specific objectives of each member state, which will amount to a long wish list containing many politically tricky issues for the UK, including for example Gibraltar or fisheries. Conversely, there will be vested interests in the EU that will put pressure on the negotiations to broadly exclude certain sectors, for example, Financial Services. Furthermore, the EU may impose constraints on the UK’s ability to set its own policies post-Brexit as the EU could see the latter as threatening the level playing field, i.e. fair and open competition post-Brexit.

2. Second, the scope of the negotiations will be much broader given the breadth and width of the existing UK-EU relationship. Tactical exclusion of certain sectors or issues, usually a vital tool in trade, is not possible. Moreover, there are many cross-cutting issues, such as data transfers or currently joint regulatory institutions, which will play a significant role given the intricacy of the UK-EU relationship. It also extends to level playing field provisions, where the EU is likely to demand more from the UK than from other trading partners.

3. Third, there is also a big world out there. Any privileged and integrated relationship between the EU and the UK will have repercussions on their respective trading with third parties. In a nutshell, under the WTO’s Most Favoured Nations provisions, special

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\(^2\) For example, CETA, the Canada-EU deal, took seven years to negotiate.
privileges afforded to one country must be provided to all trading partners that have comprehensive trade agreements with the EU or the UK. Besides, maintaining access to EU markets will impose limitations on the UK’s trade deals with other third countries.

Finally, and most fundamentally, there are no gains from trade to be made compared to the current status quo. Leaving the Single Market will entail costs across all sectors. It is a trade deal inferior to any other: no gains from further opening of markets but costs of disintegrating the existing relationship. Even if the Brexiteers might claim that there is the political gain of reclaiming control, this will be near impossible to sell politically in the UK.

Any deal will have to be ratified by both sides. If it is a comprehensive trade deal, i.e. a mixed agreement, it will entail a complicated EU ratification process, with a requirement for unanimity even down to regional parliaments in some countries (e.g. Belgium). Any UK government will struggle to convince Westminster that such a trade deal is the only option on the table. For many, especially on the soft Brexit side, it will look like a terrible deal when compared to the status quo. But the Brexiteers are also likely to baulk at such a one-sided agreement. And for Northern Ireland, it could well imply the backstop coming into force.

**Between a rock and a hard place**

This dilemma puts significant pressure on the UK, with a post-transition default outcome of ‘no trade deal’ with all the asymmetric costs this implies. Even if failing to sign a trade pact at the end of transition is not as disastrous as leaving without a WA now (as more contingencies can be put into place), for the UK, the economic costs would still be enormous. On the EU side, costs would be much lower. While there would be economic interests pushing for a deal on the long-term relationship, for any of the EU27, there might also be a countervailing incentive to torpedo the whole deal if their interests are not delivered. Disunity among the 27, which arguably would have helped the UK in the Article 50 negotiations, thus becomes an impediment for reaching a deal.

No trade deal at the end of transition is an unacceptable option. Business leaders will explain that it will cost jobs and growth when integrated supply chains become impossible. Even the possibility of no trade deal will have a significant impact, leading to sharp and painful reductions in business investment, trade and, ultimately, growth and jobs. And there will be little evidence to suggest that the alleged benefits from Brexit, especially concerning international trade, are likely to materialise. Consequently, the supporters of a soft Brexit on both sides of the political spectrum will continue to threaten the majority of the Conservative government.

The Northern Ireland issue remains unresolved as well, with the backstop looming if the UK cannot find a highly integrated customs and regulatory solution that would ensure a frictionless border (such as being inside the SM and CU). With no trade deal, a frictionless border becomes impossible, implying a customs border between mainland UK and Northern Ireland after the transition. Such an outcome is unacceptable for the DUP that provides the votes to maintain Mrs May’s majority.
A changing wind?

There remains only one possible solution: staying in the SM and the CU, i.e. putting a “Norway+” arrangement back on the negotiation table. It offers minimal economic disruption after the transition and ensures that the NI border remains frictionless.

It would require, however, a fundamental change in the UK political debate since it would virtually break every red line of the Brexiteers, from accepting Freedom of Movement of people to relinquishing the possibility of an independent commercial policy. In essence, it would imply becoming a rule-taker. Even if it were dressed up as a ‘special and unique’ arrangement, it would demand a momentous change in British politics.

For the moment, many voices across the political spectrum argue strongly against this outcome. Brexiteers claim that this does not represent a real Brexit. Corbyn and others in the Labour Party fear that such a deal would constrain the UK in its domestic policies. But there are already signs that positions are starting to shift towards a softer Brexit in light of the threatening prospect of a ‘no trade deal’ cliff edge.

In March 2019, Brexit will have become a reality. The British government will have delivered on the result of the referendum. After Brexit, there could be a general inclination to maintain the status quo and put an end to the upending of the UK’s economy. A cross-party alliance supported by business and trade unions could argue that, given that Brexit has happened, a soft landing in the form of Norway+ is the best possible option to minimise economic costs.

This shift in the political wind could be triggered when the need for an extension of the transition period becomes apparent. If the UK has to ask for an extension, it will highlight that the trade negotiations are not advancing as fast as they should. The cliff edge would, once again, put pressure on the social and economic expectations of businesses and workers alike. Controversially, any extension of the transition would commit the UK to contribute more to the EU budget, demonstrating that the costs of maintaining economic integration are much less significant than those implied by no deal or a hard Brexit. At that point, the most compelling argument could be to preserve the status quo for the long term.

Be prepared

Even if the wind changes, concluding a Norway+ deal will not be easy. Some of the barriers noted above, however, will become less difficult: an existing institutional and legal framework would merely have to be adapted. But doing so would still take time.

That’s why preparations for such a scenario must start now. Neither the European Commission nor the UK Government can start the drafting of such a solution until it is officially back on the table. Civil society, business and think tanks must take the lead. Since it is the only feasible path to avoid the prospect of not having a trade

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3 Here defined as an economic deal that ensures the UK remains effectively in the Single Market and the Customs Union.
arrangement at the end of the transition period, it is worth investing now to minimise economic disruptions for both the UK and the EU27.

Will this be a long-term solution? Probably not. It is hard to believe the UK would remain as a permanent rule-taker, even if it will wield its soft power effectively. But the Norway+ option offers a solution if the UK becomes dissatisfied with its status: the application for full membership of the European Union. Maybe, in the long run, membership of the EEA might provide a soft interlude for the UK to regain membership in future. Currently, the Norway+ option remains the sole scenario that could stop the Brexit process from becoming ever more destructive and painful for all concerned.

The EU’s Scottish Question

“The country [UK] appears deeply divided, between different population groups and geographically, with London, Northern Ireland and Scotland voting strongly to remain in. At the very least, this raises the spectre of Scottish independence again, with the political future of the continuation of the UK now in doubt.”

“In a world of great trading blocks, the EU is the best means we are ever likely to have for expanding free trade while preserving social protections. In an age where the voices of protectionism and intolerance often seem to be getting louder, the EU amplifies our own support for openness, diversity and human rights. And at a time when the rules-based international order is being threatened, the EU exemplifies the value of co-operation and solidarity.”

BACKGROUND

A dis-united Kingdom?

One of the unintended consequences of the Brexit vote almost three years ago has been the re-opening of the question of the United Kingdom’s territorial integrity. Most of the focus has, naturally, been on Northern Ireland, given the historical context and the challenge a hard border would constitute for the peace process. With Ireland being a member state, the European Union (EU) has done everything to try to find a sustainable solution to keep the border frictionless, including insisting on a backstop arrangement.

Less attention has been paid to the situation in Scotland, not least since the historical context is very different. Yet Scotland voted strongly against leaving the EU: 62% of Scottish voters voted remain, while only 38% voted to leave – a higher remain vote than in Northern Ireland. Every single one of the 32 Local Authority areas in Scotland returned a majority for remain. If anything, this sentiment has become stronger, with

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5 Speech by Nicola Sturgeon at the European Policy Centre, 11 June 2019.
6 “EU referendum results”, BBC, 24 June 2016
polls suggesting that two-thirds of Scottish voters now support remaining in the European Union.\(^7\)

**An independent Scotland?**

In the current constitutional set-up, Scotland would have no choice but to leave the EU together with the rest of the UK if and when that step is finally taken. But there has been an independence movement in Scotland for a number of years now, and the current minority Scottish government is run by the Scottish National Party (SNP), which has been advocating Scottish independence within the EU for some time.

While in 2014, Scotland voted 55% against 45% to remain in the UK, with many claiming that it would settle the question for a generation, the possibility of Brexit always carried the risk of re-opening the constitutional question: “a vote against EU membership might well split the UK, with Scotland becoming independent and applying for EU membership”.\(^8\) In part, Scotland’s vote in 2014 can be explained by the promise of stability, including EU membership, of the side opposed to Scottish independence, a proposition which is now being put into question by the Brexit process.

**A more European Scotland?**

In addition, many have argued that Scotland has a stronger affinity to the EU than much of the rest of the UK. The difference in EU support has been one of the factors cited as a possible driver for independence and such aspirations have been framed within the context of EU membership, with the SNP campaigning for ‘a Scotland in Europe’ in 2014. As the First Minister Nicola Sturgeon put it recently: “The basic values of the EU are ones we identify with. We like the idea of independent nation states cooperating for the common good. The commitments that heads of government made last month – defending one Europe, staying united, looking for joint solutions, promoting fairness, protecting democracy and the rule of law – they are ones which the Scottish Government endorses and wants to contribute to.”\(^9\) Some of the drivers for Brexit appear to also play a smaller role in Scotland, with the First Minister, for instance, emphasising that EU citizens were still welcome in Scotland in the immediate aftermath of the Brexit vote.

The independence aspirations as advocated by the SNP have to be understood within this context. While some interpret the Scottish independence agenda as being narrowly nationalistic, the SNP defines itself as centre left and social democratic, supporting EU membership for an independent Scotland as a means for close cooperation and integration: “The SNP believe in independence for Scotland, but also in independent countries working together for good of all to protect workers, tackle climate change, preserve peace and guarantee our freedom of movement – which

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\(^7\) "If there was another referendum on Britain’s membership of the EU, how would you vote? Data Scotland", 17 May 2019, What UK thinks.


\(^9\) Speech by Nicola Sturgeon at the European Policy Centre, 11 June 2019
happens through membership of the EU.”¹⁰ This is not to say that everyone in the SNP is in favour of EU membership. There are some misgivings about particular policies such as on fisheries. A minority wants to be outside any arrangement that implies a pooling of sovereignty. But, overall, the SNP, and indeed the Scottish population, are steadily supportive of EU membership.

STATE OF PLAY

Opposing Brexit

In line with this pro-European stance, the Scottish government has expressed its opposition to Brexit, demanding that a second referendum on Scottish independence must remain an option in the event of Scotland being taken out of the EU against its expressed will. This was rejected by Theresa May, who noted in March 2017 that, in her view, it was not the right time. In April 2019, Nicola Sturgeon renewed her call, demanding that an independence referendum should take place by May 2021 if Brexit goes ahead, arguing that “Brexit would have such a catastrophic impact on Scotland’s economy and Westminster’s approach to it had been so chaotic that Scottish voters must have the option to choose independence.”¹¹

The Scottish government has highlighted that it also sees it as its duty to, as far as possible, honour the way the Scottish voters have expressed their opposition to Brexit. While some portray Brexit as a Trojan Horse for independence, clearly there are a range of negative impacts that will impact on Scotland despite this path not being supported. Further reasons cited by independence supporters is the impact Brexit will have on the devolution settlement, with more powers being centralised in London, ostensibly to deal with issues such as international trade negotiations. In addition, many supporters have noted the provisions for Northern Ireland to remain fully integrated with the single market despite Brexit, which are not on offer for Scotland.

A changing tide?

It is not in the power of the Scottish government to decide on an independence referendum; this has to be sanctioned by Westminster. While many of the Conservative leadership contenders have either ruled out holding another Scottish independence referendum or set almost impossible conditions, it seems politically inconceivable that London denies these demands indefinitely.

Would there be a majority for independence? Many Scots are against holding another referendum at this moment and in opinion polling since the Brexit referendum, most polls have shown a comfortable majority against leaving the UK, albeit less decisively than before the independence referendum in 2014. But attitudes appear to be changing. The latest opinion poll suggests a dead heat, with 49% supporting independence and 51% against, within the statistical margin of error.¹²

¹⁰ “How can the SNP support membership of the EU alongside independence?”, SNP policies.
¹² The Times Survey results, 24-26 April 2019, YouGov.
However, this is only one opinion poll and how public opinion will evolve is hard to predict. A significant part of the electorate continues to be opposed to independence, driven in part by a sense of British identity but also by a degree of risk-aversion with regard to the economic impact of independence, for example in relation to currency, financial services and integration into the UK common market. But with the likelihood of a Eurosceptic Conservative in power in London and the prospect of a possible no-deal Brexit, the support for independence could potentially increase further. In case of a softer Brexit or a 2nd referendum leading to a revocation of Article 50, the immediate pressure for independence would be lessened, although it is likely that this aspiration will not disappear any time soon.

Scotland in Europe?

At the very least, there is a significant probability that an independent Scotland could be asking to join the EU within the next few years, potentially backed by an EU membership referendum within an independent Scotland. What the EU's response would be, given the current circumstances, is unclear. Last time, in 2014, the response from EU institutions was rather negative towards Scottish independence, partly due to domestic fears of secession, partly in an attempt to support the UK as a then-member state. But this time, the premise is different. With the UK leaving, and Scotland’s pro-European stance and continued resistance against Brexit, as clearly demonstrated in the referendum as well as in the European elections, the case for membership would be much stronger.

This does not mean it will be easy or straightforward. While the concern that Scottish independence could potentially encourage nationalistic/populist/far-right movements could be assuaged (not least since the SNP is clearly opposed to such movements and parties, including UKIP and the Brexit Party in Scotland), fears of secessionist movements remain in a number of member states, with Scotland potentially becoming a precedent to follow.

However, it is unlikely that Scotland will serve as a strong example for others given the context of Brexit, which provides a motivation that other secessionist movements cannot appeal to. In addition, if Scotland’s exit is strictly constitutional, sanctioned by the UK government, the ability of others to replicate such a process is limited, although it will not stop secessionists in other countries from using it as a political precedent in their communication. In this context, it seems unlikely that the Spanish government, the EU country most concerned about secessionist movements would block an independent Scotland from EU membership solely on the grounds of its own secessionist concerns as long as independence has been gained in accordance with UK constitutional provisions.

But is Brexit simply an excuse to drive forward the independence agenda, as many opponents claim? At this time of significant upheaval across the EU, there is more scrutiny of and sensitivity to the true intentions of the Scottish government. Scotland will have to make a strong and credible case for EU membership, showing not only that this would be mutually beneficial but also that an independent Scotland would uphold and defend the principles of European integration, not least in accepting the terms and conditions of membership in full. This is not only necessary to convince the EU but also to make the case domestically.
PROSPECTS

No more awkward partners

There are practical considerations that will make obtaining EU membership more complicated. The EU will want to avoid complicating the Brexit process further, which implies that EU membership for an independent Scotland can only be considered once both divorces are finalised. On the other hand, for the EU, gaining a pro-European, constructive and committed member state out of the negative Brexit experience could well be seen as major upside. That is, if Scotland can demonstrate its intention to be a reliable pro-European partner; the last thing the EU would want is to replace one awkward partner with another.

Over to Scotland

How smooth the accession process will be will depend to a large extent on Scotland itself. While Scotland will be further along in meeting the accession criteria than most applicants, politically, it will be necessary to demonstrate that the Scottish identity is inclusive and pro-European, rather than divisive and closed. The positive treatment of EU nationals by the Scottish government is a good starting point. A high degree of engagement with the EU, working pro-actively on common European objectives, backed by positive communication both within the EU and domestically, will also help.

Scotland must also show that it could provide stability. Economic or social chaos post-separation from the UK would need to be avoided, for example in relation to fiscal/debt policy, which could be challenging in a post-Brexit environment. This need for stability also extends to the political environment. The EU would want to ensure that Scotland could credibly commit to the obligations of membership, so commitments in law, including potentially a written constitution, might be necessary.

To alleviate the concerns of those countries with domestic secessionist movements, the separation of Scotland from the UK must be strictly constitutional, and fully accepted by the UK government. This would also ensure that the principle of reciprocal non-interference in each other’s constitutional affairs could be maintained. The expectation would be that Scotland would need to go through the normal route for EU accession – Article 49 TEU. Any suggestion that Scotland could somehow take the UK’s place would be resisted strongly.

Strictly no cherry-picking

Preventing Scotland from being the successor to the UK would ensure that current special provisions for the UK would not automatically apply to Scotland. In case of Scottish accession, there would be no special treatment. Membership would come with all the obligations of a ‘regular’ EU country. That would entail committing to joining the euro once the conditions are fulfilled (although in practice this might take a long time), creating the necessary independent institutions, contributing to the EU budget as a net payer, adhering to the Common Fisheries Policy, and accepting free movement: in effect, accepting the acquis communautaire fully across the vast majority of policy areas.
While there might be limited exceptions, most likely in the form of (temporary) derogations, these will have to be well argued and follow a clear logic. For example, on Schengen, one could argue for including an independent Scotland in the Common Travel Area with Ireland and the UK, replicating an arrangement that already exists for an EU member state.

The accession process is likely to take a few years. In the meantime, it might be best for an independent Scotland to enter the European Economic Area (EEA) as a ‘parking position’ before entering the EU. That would ensure that, economically, Scotland would still be integrated, although it would (temporarily) miss the political power that comes with full membership. However, it would have to be clear that the EEA is not the ultimate goal. From an EU perspective, only full and unconditional membership in the EU would demonstrate a real and sustainable commitment to European integration.

A win-win

Under those circumstances, membership of an independent Scotland would also provide the rest of the EU with a range of benefits, especially if it acts as a loyal member and even champion of the EU project. This could build on the positive engagement Scotland has demonstrated already: for over 25 years, Scotland has invested heavily in EU engagement, and during that time, has had a strong visibility and proactive role in Brussels. This can be seen in both the presence of Scotland and how Scotland works at the EU level. This (at least) matches the contributions of other small EU countries in many areas.

Scotland could also potentially act as a bridge between the EU27 and the UK, and ease the integration of Northern Ireland. As a member state, Scotland would bring a range of assets into the EU, including in the area of resources and energy, in the battle against climate change, a highly developed research/education/HE sector, with a positive acceptance of Freedom of Movement in this field and beyond, and a positive global role and image. Being a net payer into the budget will also help.

Scottish accession could add to a more positive narrative about the Union if an independent Scotland can prove its strong commitment to European integration. Having a positive, enthusiastic European partner that shows such determination to remain an EU member would reflect positively on the EU. It would also show other secessionists that being outside the EU was not even considered as a feasible path, shoring up stability and highlighting the benefits of EU membership. It would also make it clear that leaving the European Union can come at a high cost, even including the territorial integrity of one’s own country.

Open arms?

All of this does not guarantee that the EU27 would welcome the application of an independent Scotland with open arms. Any hint of non-constitutional processes or demands for special treatment would stand in the way of Scottish accession. Much would depend on Scotland itself. But if the conditions are met, the EU should engage positively with Scotland and treat it like any other accession country, acknowledging not only that Scotland is much further along in meeting the conditions of membership
but also that the trigger for Scotland’s exit from the UK would be Brexit, which Scotland has strongly rejected.

In the end, if Scotland delivers, then rejecting a country that wants to be in the EU, accepts all conditions, is willing to go through the appropriate processes and follows European principles is not only short-sighted but should be inconceivable: rejecting such a country would undermine the basis of the EU, creating serious damage to the fabric of the integration project. It would be ironic if the EU manages to hold fast to its principles when negotiating with the UK but jettisons them in the negotiations with an independent Scotland. The long-term damage of the latter might well end up outweighing the impact of Brexit itself.

The Worst is Yet to Come

So far, Britain and the EU have only talked about exit modalities. Negotiating their future relationship will be even more difficult. Brexit creates many risks that the EU27 needs to prepare for.

Every day brings new twists and turns in the Brexit saga that make predictions difficult. But whatever the exact date and form of the United Kingdom’s departure from the European Union, Brexit will have major geostrategic implications for the EU.

Any analysis of the longer-term impact has to go beyond the UK-EU relationship itself and address the broader implications for both the EU and the UK in itself, not only in economic terms but also with regard to geostrategy and security. It is true that there can also be positive aspects to Brexit, especially if the EU reacts by building strategic capability and enhancing policy cohesion. But, in the end, Brexit mainly creates risks, which need to be handled and prepared for.

It is worth recalling that the embittered, tortuous Brexit negotiations so far have only been the beginning of the exit process: the talks have focused only on the exit modalities (Northern Ireland border, financial obligations, citizens rights, and transition). The more substantive negotiations on the long-term relationship, including the economic relationship, are still to come. These will be even more difficult than the exit talks, and chances are high that no deal can be reached. Even though some companies or regions could benefit if competitors for market share or investment are weakened, the economic impact will be negative for the EU overall.

The dangers of “UK First”

Failing to reach a deal on the framework for UK-EU trade would inflict significant economic costs, making integrated, cross-border value chains impossible unless the UK (or parts of it) remains tied to the Single Market, as Northern Ireland now looks likely to. These economic costs are probably higher for the UK in both relative and absolute terms. But the impact on the EU and its member states is far from negligible, especially for countries with close economic ties to the UK, such as Belgium and the Netherlands. No deal would hit Ireland particularly hard, potentially necessitating special assistance from the EU.
But the long-term effect could be even more significant. The EU-27 could be faced with a competitor posing far more fundamental challenges than a UK still closely integrated and conforming to EU rules. The UK could pursue a far more aggressive industrial strategy in an effort to support domestic industries: a “UK First” approach. There could be mercantilistic competition and conflict, including for contested resources and markets in areas such as fishing and energy.

With no deal, the level-playing-field provisions included in the Withdrawal Agreement would not come into force, opening up the possibility of the UK adopting lower standards. It is premature to presume that the UK would not go down this route, given the economic necessities that will arise after Brexit. For example, driven by a necessity to quickly establish new economic relationships, the UK could pursue trade deals around the globe by undercutting the EU. If the UK drives down standards for environmental protection, labour rights, tax and competition, and consumer and data protection to gain a competitive advantage, some EU member states would push for the bloc to follow suit, potentially undermining the EU’s regulatory ambitions.

**Risks for the financial sector**

With Brexit, the EU is losing a significant part of its economic capability across a wide range of sectors. The strength of some of these sectors is geo-strategically important to the EU. Simply put, the EU must be a significant player in these sectors in order to play a role at the global level. Achieving strategic autonomy in related policy areas will become much more difficult.

The sectors where the UK makes a disproportionately large contribution to the EU economy include defence, aviation/space, research/academia, and business and legal services, as well as parts of the new technologies sector. Thus Brexit will have an impact on the EU’s ability to, for example, maintain industrial competitiveness, expand its services exports, provide security hardware, and boost innovation and technological sovereignty. A particular case in point are financial services and capital markets, where a breaking-away of the UK could well result in the loss of an EU global financial centre, with implications for the availability and cost of financial services and capital.

The impact will depend on how close the economic ties between the UK and the EU will be after Brexit. If the UK were to remain part of the Single Market, these capabilities would stay within the economic structure of the European Economic Area. Conversely, a no-deal outcome would severely impair the economic ties between the UK and the EU. While it is undoubtedly true that the UK would lose significant parts of these industries, this does not necessarily imply that the economic activity would simply shift to the EU, given the global opportunities that exist for example for the financial services sector.

One particular concern is the instability a chaotic Brexit might trigger in the financial sector, for example, if there is significant capital flight or speculative attacks on sterling in the aftermath of an (unexpected) no-deal Brexit. This could affect the stability of UK-based financial institutions and have knock-on effects on the global financial system. At the very least, stabilizing the situation might require a concerted effort of the Bank...
of England, together with the European Central Bank and other international financial actors.

**Neighbours, allies, and rivals**

The UK leaving will also profoundly change the EU’s relationship with other countries. The political geography of Europe would change, affecting, for example, Gibraltar and the Channel Islands. The EU’s relationship with countries such as Switzerland, Norway, and Turkey would also be altered, in part depending on the model chosen for the EU-UK relationship. The EU will most likely have to define much more concretely what kind of relationship it wants to have with European countries that have no intention of becoming member states. The current models, such as integration within the Single Market or countries being within the accession process, are unlikely to be applicable, so Brussels will have to develop new models, such as, for example, a permanent strategic partnership or associate membership.

Post-Brexit, there is also a good chance that the UK could become a pawn in global great power rivalries. The UK would need to seek new and separate strategic relationships with key countries around the world, including the United States, Russia, and China—but it would be vulnerable given post-Brexit economic pressures and political instability. Other powers would have an opening to employ divide-and-conquer tactics, to try to push the UK and EU to take divergent positions on crucial global policy issues such as the global multilateral trade system or openness to investment in strategic sectors. The UK could be seen as a Trojan horse to undermine the EU and/or Western liberal democracy, which would, in turn, have consequences for the possible level of ambition in the UK-EU relationship, including in terms of openness for trade and investment.

There are no guarantees that the UK would remain aligned to EU policy priorities after Brexit; indeed, over time, it is likely that the UK will start diverging. The continuation of cooperation on issues such as climate change, development or combatting tax havens cannot be taken for granted. Non-alignment on global issues, for example on pursuing the sustainable development goals, would reduce the effectiveness of EU action and undermine the possibility of achieving global progress on these issues, not least since it would strengthen divergent standpoints. However, Brexit could also have a positive effect if it increases pressure on the EU27 to act jointly, removing the possibility of hiding behind British opposition to further integration in the foreign policy field.

**Less influence, more risks**

Losing the UK will have certainly a negative impact on the EU’s strategic culture. The UK has—together with France—been the only big power in the EU that has had a more strategic approach to external affairs and a more global strategic culture than that of other member states. In addition, a lack of policy alignment would be a particular challenge in the field of international policy and internal and external security, where UK capacities remain critically important for the EU27, including within the NATO context. If, for example, there was a significant divergence in views on issues such as the Iran nuclear agreement, or if the UK’s departure were to weaken the resolve of the remaining member states, e.g. on Russian sanctions, it would (further) reduce the
likelihood that the EU could affect such global policy issues and hinder the ability of the EU to develop further capacity in future.

One area where cooperation will become significantly more difficult, even given goodwill on both sides, is internal security, the fight against organized crime and counterterrorism in particular. European arrest warrants will no longer be available to the UK, implying that extradition will revert back to being a lengthy and uncertain process. This is likely to benefit internationally mobile criminals and terrorists, including UK nationals who might seek refuge from British jurisdiction elsewhere in Europe, reducing security for the UK and for the rest of the EU.

Limitations on cooperation will also affect the ability to share data, again reducing the ability to combat terrorism and crime. The EU will lose the member state that probably still has the greatest access to covert intelligence information, leaving a gap in its capabilities. In the online world, cooperation on cybersecurity is likely to be reduced, mirroring international cooperation on such issues rather than the more closely integrated cooperation within the EU, again reducing effectiveness.

It is not just that the UK’s departure will take one of Europe’s main hard security providers out of the EU—there are also real questions about whether the UK’s capability can be maintained beyond Brexit. Potential territorial fragmentation, fiscal pressures, and overstretch could force the UK to scale back its commitments, for example in relation to peace-keeping, including in Cyprus. And in the longer term, the stress of Brexit might create challenges to the UK’s nuclear capabilities and its seat on the UN security council, reducing European influence as a whole. This might hasten the need for the EU to become a more significant actor in its own right. But in the meantime, it would reduce its capacity to deal with international challenges.

An era of conflict?

Hindering cooperation is one thing, but a no-deal Brexit could also bring about direct EU-UK conflict, for example when it comes to Gibraltar, fishing grounds, resources such as energy, migrants crossing EU territories to get to the UK, or Northern Ireland. Conflict does not necessarily mean physical confrontation, although it might come to that in some instances, similar for example to the “cod wars” between the UK and Iceland. But even in the absence of such an escalation, it will be necessary to find dispute resolution mechanisms for such issues.

Whichever way the Brexit process ends, there is likely to be a significant community in Northern Ireland dissatisfied with the outcome. Re-instituting border controls would be unacceptable to large parts of the population in Northern Ireland, putting into question the constitutional status quo. In fact, a referendum about the reunification of the island could well be back on the agenda. The unionists would resist this. But the Republicans would challenge a hard border. The potential for violence is high under both scenarios.

A re-eruption of violence would also draw the EU27 into the conflict, not only because of the role the Republic of Ireland would have to play but also because a significant part of the Northern Ireland population now has EU passports, making them EU citizens who can demand support. If it becomes necessary to patrol the border in
Northern Ireland to keep the peace, the Northern Ireland police service is unlikely to be able to do it alone (if at all). But the involvement of UK armed forces would be highly contentious, raising the question of what role the EU would need to play.

Disintegration and discord

In addition to potential changes to Northern Ireland’s constitutional status, there is a significant chance of territorial disintegration, with Scotland separating from the United Kingdom. No deal would make a second independence referendum in Scotland almost certain. Current opinion polls indicate that a chaotic exit might well be enough to lead to Scottish independence, which would almost certainly be followed by an EU membership application. There are positive aspects of such a possibility, with the EU potentially gaining a committed member, demonstrating the desirability of EU membership, but so far there is little thinking in the EU about how to react to such a scenario.

The dissolution of the UK would, among other impacts, change its capacity as a global actor, for example with regard to its role in NATO and its capacity to maintain a nuclear deterrent, given that the UK’s nuclear submarines are berthed in Scotland with no obvious facilities available elsewhere in the UK.

One of the most remarkable aspects of the Brexit process has been the unity displayed by the EU27. But unity might well fray in a no-deal scenario. In the countries hit hardest by a disorderly Brexit, there will be strong domestic pressure to find quick-fix solutions, even if these go against common EU positions. If the UK reneges on its commitments made in the first phase of the negotiations (on EU citizens’ rights, financial obligations, and the Northern Ireland border), the potential of conflict between member states increases further. Indeed, the hole Brexit is leaving in the EU budget is already creating discord.

Address the strategic issues

But as difficult as no deal would be, the EU doesn’t have to sacrifice its principles simply to ensure an orderly Brexit. It is in the EU’s economic and political interest to remain united on its red lines, which also limits what can be offered to the UK at this point; caving in to British cherry-picking would, in the end, pose an existential threat to the EU itself.

However, the EU needs to tackle the hard strategic questions Brexit poses. It has to address the multifaceted and long-term impact, including questions that an acrimonious divorce would raise, including how to best to mitigate the negative impacts of Brexit and how to manage future conflict with the UK; and perhaps most importantly how to increase the EU’s capacity and capability in areas that are weakened by Brexit.

The EU27 will need to redefine not only its relationship with the UK but also with other neighbours and the rest of the world. Crucially, the EU member states need to maintain unity and agree on a common strategic negotiation position in case it comes to no deal. If the worst-case scenario cannot be averted, the EU27 must be fully prepared.
NEGOTIATING THE FUTURE UK AND EU RELATIONSHIP

Introduction

This paper provides a summary of some of the key issues to consider around the negotiations between the UK and the EU on the future relationship. The negotiations will begin after the UK leaves the EU on 31 January 2020. The paper is based on the SPICe Briefing Negotiating the future UK and EU relationship which was published on 17 January 2020.

Context

After the UK leaves the European Union on 31 January 2020, attention will turn to the negotiation of the future relationship between the EU and the UK. The Political Declaration on the Future Relationship (agreed in October 2019) provides an indication of the likely direction for discussions between the UK and the EU. The Political Declaration covers the following areas:

- Part I - initial provisions.
- Part II - economic partnership.
- Part III - security partnership.
- Part IV - institutional and other horizontal arrangements.
- Part V - forward process.

The economic partnership section covers ambitions for a Free Trade Agreement and provides details on the approach for goods, services, mobility arrangements, transport, energy, fishing opportunities, global co-operation and level playing field provisions.

The security partnership section covers joint ambitions for co-operation in criminal matters, foreign policy, security and defence.

The institutional arrangements section describes a joint desire for an overarching framework for governance, which could take the form of an Association Agreement. This includes mechanisms for dialogue, strategic direction and dispute resolution.

The process for negotiating the future relationship

The EU's approach to negotiating agreements with third parties is guided by the Treaties and as a result the EU is subject to tight legal restraints. Article 218 of the Treaty on the Functioning of the EU (TFEU) sets out the procedure for the EU's negotiation of international agreements with third countries (the Institute for Government has produced a useful explainer). The process set out in Article 218 is highlighted in the Political Declaration as the process by which the future relationship negotiations should be conducted.

Article 218(8) states that any agreement will be achieved by a qualified majority vote of the Council. This means that 72% of the 27 EU member states (representing at
least 65% of the total population of the 27 EU member states) need to vote in favour of the agreement.

However, Article 218(8) adds that the Council must act unanimously when the “agreement covers a field for which unanimity is required for the adoption of a Union act, as well as for association agreements”. In addition, Article 207(4) provides that negotiations under Article 218 where they include the fields of trade in services, the commercial aspects of intellectual property and foreign direct investment should also require unanimous agreement in the Council.

In most cases any agreement also requires the consent of the European Parliament. If the agreement is a mixed agreement, covering areas of both EU and member state competence, ratification will also be required by member states in accordance with their own constitutional requirements.

There is little detail about the UK Government's intended approach to the negotiations. The provisions of the original Withdrawal Agreement Bill had made reference to a role for the UK Parliament, however, these provisions were removed in the new European Union (Withdrawal Agreement) Bill which was introduced in the House of Commons on 19 December 2019.

The removal of the commitments in the European Union (Withdrawal Agreement) Bill may result in the UK Parliament facing a challenge in being able to both scrutinise and influence the nature of the future relationship negotiations. This is in contrast to the role that the European Parliament has in overseeing the EU's approach to third country negotiations. On a parliamentary role in the negotiations, the Institute for Government has argued that:

“It is far from clear what role, if any, the government now envisages for Parliament. By sidelining Parliament, the government has greater flexibility in terms of when to start the negotiations – but ministers still need to think about how to update MPs during the talks.”

There is no role in the negotiations on the future UK-EU relationship for the Scottish Parliament or Scottish Government set out in the Withdrawal Agreement Bill.

The key EU players

On 22 October 2019, the European Commission announced that a new ‘Task Force for Relations with the United Kingdom’ (UKTF) was to be established. Michel Barnier was appointed as Head of the Task Force with responsibility to oversee negotiations on the future relationship between the EU and the UK. Barnier led the Commission's Article 50 Task Force negotiating the terms of the UK’s departure from the EU.

Michel Barnier will be expected to work closely with the new Commission President Ursula von der Leyen, new Council President, Charles Michel, and the 27 Heads of State and Government represented in the European Council.

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Adding further continuity, Sabine Weyand - Michel Barnier’s deputy during the Article 50 negotiations - is now the head of the European Commission’s directorate general for trade, meaning she will also play a role in the future relationship discussions with the UK.

EU priorities for the negotiations

The European Commission is yet to publish a draft mandate for negotiations. Michel Barnier, has indicated that the European Commission hopes to propose the negotiating mandate by 1 February with the negotiations being launched towards the end of February or early March with the aim of “making as much progress as possible by June” when EU27 and UK leaders will meet to take stock of the negotiations.

In a speech at the London School of Economics on 8 January 2020, the Commission President Ursula von der Leyen was clear that the depth of the future relationship will be dictated by the UK Government's decision to end free movement and dependent on the UK Government's approach to level playing field provisions:

“But the truth is that our partnership cannot and will not be the same as before. And it cannot and will not be as close as before – because with every choice comes a consequence. With every decision comes a trade-off. Without the free movement of people, you cannot have the free movement of capital, goods and services. Without a level playing field on environment, labour, taxation and state aid, you cannot have the highest quality access to the world’s largest single market.

The more divergence there is, the more distant the partnership has to be.”

The Commission President also suggested that the UK Government's insistence on not extending the transition period beyond the end of 2020 would mean that the negotiations would have to focus on a number of priorities and that an all-encompassing future relationship might not be possible in the eleven months available. Given these limitations and the EU’s determination to protect the integrity of the Single Market and the Customs Union, Ursula von der Leyen set out the EU’s priorities for the negotiations:

“But we are ready to design a new partnership with zero tariffs, zero quotas, zero dumping. A partnership that goes well beyond trade and is unprecedented in scope. Everything from climate action to data protection, fisheries to energy, transport to space, financial services to security. And we are ready to work day and night to get as much of this done within the timeframe we have.”

Following Ursula von der Leyen’s visit to London, Michel Barnier, spoke at the European Commission representation in Stockholm. He highlighted that the time to negotiate the future relationship (eleven months) would be “hugely challenging” if the UK Government chose not to request an extension to the transition period.

Barnier reiterated the EU's priorities as set out in the Political Declaration - security and an economic partnership making clear that the economic partnership will be "subject to a level playing field on environmental and social standards, state aid and tax matters"\(^{15}\).

**UK priorities for the negotiations**

The Prime Minister met European Commission President Ursula von der Leyen in London on 8 January 2020. According to the UK Government's readout of the meeting:

“On Brexit, the PM stressed that his immediate priority was to implement the Withdrawal Agreement by January 31. They discussed the progress of ratification in the UK and in the European Parliament.

He said the UK wanted a positive new UK and EU partnership, based on friendly cooperation, our shared history, interests and values.

The PM reiterated that we wanted a broad free trade agreement covering goods and services, and cooperation in other areas.

The PM was clear that the UK would not extend the Implementation Period beyond 31 December 2020; and that any future partnership must not involve any kind of alignment or ECJ jurisdiction. He said the UK would also maintain control of UK fishing waters and our immigration system.

The PM made clear that we would continue to ensure high standards in the UK in areas like workers' rights, animal welfare, agriculture and the environment.”\(^{16}\)

Ahead of the UK Government’s negotiation of a new relationship with the EU, it is not clear whether there will be discussion within the UK about what the country wishes to prioritise and achieve from the future relationship negotiations. On 10 January 2020, the Institute for Government published *Getting Brexit done What happens now?* In the paper, the IfG suggested that the UK Government needed to agree its priorities in the negotiations adding that:

“But it is far from clear how much detailed thought the Johnson administration has given to what it wants from Great Britain’s relationship with the EU...

...An immediate task for the new government will be revisiting that work on the future UK–EU relationship, before reaching collective agreement within the Cabinet on the detailed negotiating objectives.”\(^{17}\)

**Timing for the negotiations**


\(^{17}\) https://www.instituteforgovernment.org.uk/sites/default/files/publications/getting-brexit-done_0.pdf
A key element which may influence the future negotiations is the restriction on the timescale to make a request to extend the transition period beyond the end of 2020. The Withdrawal Agreement provides for the Joint Committee to agree an extension of the transition period for up to one or two years but states that a decision on extending the period must be taken by 1 July 2020. As a result, there is very limited time to agree a new relationship before the implementation period ends or for a decision to be made about extending it.

Clause 33 of the Withdrawal Agreement Bill provides that a UK Minister "may not agree in the Joint Committee to an extension of the implementation period". As a result, this would set down in UK law that the UK would exit the implementation period at the end of December 2020. In the event the UK Government fails to conclude its desired future relationship with the EU before the end of December 2020, the UK will once again face an effective no-deal situation (in relation to trade in goods and services). At this point, however, the UK would not be a member of the EU and there is no clear and obvious way to delay such a no-deal scenario as was possible when seeking three extensions to the Article 50 process in 2019.

Role for the devolved administrations and legislatures in the future relationship negotiations

The Scotland Act (as with the Acts in relation to Wales and Northern Ireland) specifically reserves foreign affairs and international relations, including relations with territories outside the United Kingdom, whilst not reserving observing and implementing international obligations. Given the likely breadth of any future relationship negotiated with the EU, it is likely to include obligations in devolved policy areas.

The Institute for Government has argued that "the UK government must involve the devolved administrations to properly reflect Scottish, Welsh and Northern Irish interests in the talks" writing:

“Many of the areas included in the future relationship negotiations will have direct implications for devolved competencies. Decisions made in Westminster will constrain devolved activity, in particular in terms of agriculture, fisheries and any level playing field commitments on the environment.

The devolved administrations will also be responsible for implementing parts of the future trade agreement, and any legislation implementing a new UK–EU trade deal will almost certainly require the consent of the devolved legislatures. A failure to actively involve the devolved administrations throughout the next phase of negotiations will increase the risk of practical and political fallout when a deal is brought back from Brussels.”

At this stage, no formal role has been set out for the UK's devolved administrations and legislatures in the UK-EU future relationship negotiations. As then Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, David Lidington made a written statement to the House of Commons in July 2018 on "Engaging the Devolved

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In it he set out the then UK Government's approach to ensuring the views of all four nations of the UK are represented in the Brexit negotiations:

“It is imperative that, as the United Kingdom prepares to leave the EU, the needs and interests of each nation are considered and that the UK Government and devolved administrations benefit from a unified approach wherever possible. That is only possible through the strength of our relationships and continued constructive engagement through a number of fora at ministerial and official level.”

Giving evidence to the Scottish Parliament’s Culture, Tourism, Europe and External Affairs Committee on 31 October 2019, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell spoke about the level of devolved administration input into the Brexit negotiations and in particular the consequences for devolved competences of the negotiations for the future relationship:

“We have had enormous difficulty getting the UK to the table on this issue. The Johnson Government has added an extra dimension. We had an agreement with the previous Government at the British-Irish Council in Manchester in June. In the margins of that, we had a JMC meeting, where we finally agreed a timetable. We agreed that, by the end of September, we would have the initial outline of what should happen and that the work should be finished by the end of the year. That is not going to happen. We have not had the initial outline—we have still not seen anything, and it is almost November. In my view, there is no point in having that conversation in November, because the election will take precedence, and what will happen on this matter will be guided by what happens in the election.

There is a potential solution, which is to recognise that the detailed negotiations will involve devolved competencies. You could theoretically argue that the withdrawal agreement and the political direction do not involve devolved competencies. I disagree with that, but you could argue that they are covered entirely by the international relations reservation. The fact that the UK Government has had to seek legislative consent for the withdrawal agreement bill rather gives the lie to that, but that is in the past.”

The Cabinet Secretary reiterated the Scottish Government's belief that “where there are devolved competences, the decision on those devolved competences must be made by the devolved administrations, not by anybody else”.

Key areas of negotiation from a Scottish perspective

There are a number of policy areas of interest to Scotland which are likely to be subject to discussion as part of the future relationship negotiations. These include:

- Level playing field

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Level playing field

On 14 January 2020, the European Commission published slides on the level playing field issues likely to be at play during the future relationship negotiations. The slides set out the Commission's approach to the negotiations on level playing fields would be based on the overarching principle that:

“Given the Union and the United Kingdom’s geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field.”

Leading from this, the Commission set out the objective of achieving common approaches in the following fields:

- State Aid to prevent undue distortion of trade and competition;
- measures on good governance in the area of taxation;
- environmental policy; and
- workers’ rights.

Fisheries

The UK will become an independent coastal state on exit day, but the status-quo will be maintained during the transition period under the EU Common Fisheries Policy. After the transition period, the UK will have control over access to its waters and will set the conditions granting access to foreign vessels.

The Political Declaration on the Future Relationship indicates a link between access to waters and negotiations on the wider UK-EU economic partnership stating:

“Within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, inter alia, access to waters and quota shares. (Article 73).”

Access to the UK’s fisheries waters is likely to be an early priority for EU Member States. The trade-off presented may include continued tariff-free access to the EU market for fisheries products.

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22 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf
In Scotland, inshore fisheries primarily target non-quota shellfish species such as crab, lobster and nephrops (langoustine). The majority of this catch is exported as live or fresh product to European markets tariff-free. Increased tariffs and non-tariff barriers such as customs delays and new certification requirements could reduce the inshore fleet's already narrow profit margins²³.

**Seafood processing** is also a significant part of Scotland's marine economy and is larger than both the fishing and aquaculture industries. As with inshore fisheries, the Scottish seafood processing industry is heavily reliant on tariff-free access to European markets both for imports and exports²⁴.

**Agriculture**

Key issues relating to agriculture likely to be at stake during the future relationship negotiations can be split into two categories: regulatory standards; and tariffs and access to markets.

Whilst the UK and Scottish governments will be free to set regulatory standards after Brexit, in reality, future regulatory standards may depend on the trading relationship between the UK and the EU and the influence of the UK’s agreements with non-EU countries. In particular, new trade agreements with countries with lower standards on animal welfare, the environment or food safety may put the UK and Scottish governments under pressure to reduce domestic standards so as not to give imported goods a competitive advantage. In contrast, discussions with the EU are likely to emphasise the need for regulatory alignment.

The other element of the future relationship with the EU to be negotiated is market access and tariffs on agricultural products. Agricultural producers currently enjoy frictionless and tariff-free trade with the EU. Food and Drink is Scotland's largest export sector²⁵; nearly 40% of Scottish food and drink exports are traded with the EU²⁶. This is particularly important in certain sectors: 87.7% of UK beef exports went to EU countries in 2018; likewise 95.1% of UK sheep meat exports went to EU countries in 2018, with France being the largest importer²⁷. Some sectors such as livestock production, which make up 42% of Scotland's agricultural output, are particularly vulnerable to the impacts of losing free trade with the EU.

The EU has indicated that it is open to free trade on all goods, but only if common standards continue to apply. In an interview with The Guardian and seven other European newspapers, chief Brexit negotiator for the EU, Michel Barnier, clarified the EU's position on market access conditions:

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²⁵ [https://www2.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication/ESSPDF](https://www2.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication/ESSPDF)

²⁶ [https://www2.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication/ESSPDF](https://www2.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication/ESSPDF)

²⁷ [https://www.qmscotland.co.uk/sites/default/files/qm3156_rmip_2019_aw_lo_res.pdf](https://www.qmscotland.co.uk/sites/default/files/qm3156_rmip_2019_aw_lo_res.pdf)
“Access to our markets will be proportional to the commitments taken to the common rules...The agreement we are ready to discuss is zero tariffs, zero quotas, zero dumping.”

From the EU's point of view, therefore, compliance with common regulatory standards as discussed above is inextricably linked to EU market access and the setting of tariffs.

**Services**

The UK economy relies heavily on exporting services to the EU. 45% of all outgoing trade consists in cross-border services, and more than a third of these are purchased in the EU. Trade in services will be a vital component of the future relationship between the UK and the EU. The Scottish Government has argued that Brexit could harm Scotland’s services industry:

> “With 75% of Scotland’s economy based on services, representing a third of our trade with the EU, Brexit will seriously hamper our ambitions to grow our services exports and the opportunities for businesses to expand and become international players.”

Trade in services is not hindered by tariffs applied at the border, but by internal laws and regulations on the provisions of services. For instance, rules on immigration, eligibility for work visas and the recognition of qualifications are obstacles to the provision of professional services (legal, consultancy, architecture) by non-UK nationals and non-UK companies. Each country can decide to what extent, and in which sectors (health, education, banking, etc), it wishes to open its services market to foreign providers.

Outside a ratified trade agreement, WTO rules govern trade in services. The rules of the WTO's General Agreement on Trade in Services (GATS) do not establish a standard set of obligations. Each State can choose to maintain regulatory barriers and discriminatory measures that affect foreign services and service providers. Rules on services under WTO law and free trade agreements, typically, do not increase liberalisation considerably. When States open their market to foreign services, they prefer to do it as a matter of choice rather than obligation and want to be able to restrict access in the future.

**EU funding programmes**

As a third country, the UK may be able to participate in some competitive programmes.

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The Political Declaration noted the potential for future UK participation in EU programmes in areas including science and innovation, youth, culture and education. However, the Political Declaration did not identify any specific funding programmes.

The UK could negotiate to participate as a third country in these programmes but would need to abide by the conditions set out in the appropriate programme regulations. The conditions are likely to include making a financial contribution to the programmes, however, it is currently unknown what level of contribution the UK would be required to pay to participate in individual programmes.

It is not certain at this time which funding programmes the UK might negotiate to enter beyond 2020, nor whether negotiations will have concluded in time to allow participation in the programmes from their outset in January 2021.

During the current and previous EU programme periods, Scotland has benefitted from funding and opportunities especially in the Erasmus and Horizon programmes.

Conclusion

Given both sides' red lines, it is clear that the future relationship cannot provide for the same benefits that the UK enjoys as an EU Member State. This means that in areas such as agriculture and fisheries, ensuring relatively frictionless access to the EU market will be more challenging. In addition, UK goods being sold into the EU will need to continue to comply with EU standards. For the UK's service industry, Brexit will reduce market access and lead to barriers for UK service providers seeking to provide services in the EU.

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